UNITED
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AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 550

Case No. 604: SHA'ER

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Samar Sen; Mr. Ioan Voicu;

Whereas, on 9 May 1991, Badriyeh Sha'er, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East, hereinafter referred to as UNRWA, filed an application containing the following pleas:

"Section II:

Appeal is respectfully submitted to the esteemed Tribunal in order to take the following decision against Respondent:

1. Rescinding of the decision of the Director of UNRWA Affairs, S.A.R. [Syrian Arab Republic], per/A 1066 J(128) dated 2 February 1987, which terminated the services of the Applicant under staff regulation 9.1 and area staff rule 109.1 (...).

2. Reinstatement to duty, and payment of salaries accrued during the period of cessation.

3. Appropriate compensation left for the estimation of the Tribunal for the injury and loss sustained by Applicant.

4. In case the Commissioner-General did not elect to reinstate Applicant to duty, payment of full separation benefit computed according to regulations valid at the time of the decision, including calculating the period of cessation for the purpose of fixing benefits.

5. Payment of litigation expenses and lawyer's fees."

Whereas the Respondent filed his answer on 25 July 1991;

Whereas the Applicant filed written observations on 25 August 1991;

Whereas, on 9 October 1991, the Respondent submitted additional documents and on 9 November 1991, the Applicant commented thereon and also submitted additional documents;

Whereas, on 7 January 1992, the Respondent submitted an additional statement and on 22 February 1992, the Applicant commented thereon;

Whereas, on 27 May 1992, the Applicant submitted an additional document;

Whereas the facts in the case are as follows:

The Applicant entered the service of UNRWA on 14 September 1959, as an area staff member and was offered a temporary indefinite appointment as a teacher. She served thereafter until 6 February 1987, when the Administration terminated her appointment with effect from 6 February 1987, pursuant to area staff regulation 9.1 and area staff rule 109.1. At the time of the events that gave rise to the present proceedings, the Applicant was employed as Head Teacher of a Preparatory School in the Syrian Arab Republic.

On 25 February 1987, the Applicant asked the Director of UNRWA Affairs in the Syrian Arab Republic to reconsider the administrative decision to terminate her appointment and to reinstate her. In a reply dated 2 March 1987, the Director of UNRWA Affairs in the Syrian Arab Republic informed the Applicant that the decision she was contesting would be maintained.

On 22 March 1987, the Applicant lodged an appeal with the Joint Appeals Board (JAB). The Board adopted its report on 7 May 1987 and concluded that the decision to terminate the Applicant's appointment was "sound and in order" and "in compliance with existing applicable Rules and Regulations." On 18 May 1987, the Commissioner-General decided to accept the Board's conclusion. On the same date, he transmitted to the Applicant a copy of the Board's report and informed her of his decision to maintain the administrative decision to terminate her appointment.

The Respondent states that "in accordance with established procedure at UNRWA, this letter was transmitted on 21 May 1987, by the Field Administration Officer to the Area Officer in Damascus, who conveyed it to the Applicant." The Applicant's personnel files contain a carbon copy of a letter dated 21 May 1987, addressed to the Applicant by the Deputy Director of UNRWA Affairs in the Syrian Arab Republic stating: "I attach a communication to you from the Commissioner-General".

On 20 October 1987, the Applicant wrote to the Minister of Social Affairs and Labour of the Syrian Arab Republic asking for an investigation into the termination of her services by UNRWA. This letter was transmitted on 24 October 1987, by the Minister of Social Affairs and Labour to the General Administration for Palestinian Arab Refugees (GAPAR), an organ of the Syrian Arab Republic responsible for liaison with UNRWA. The Minister requested "an investigation into the case in order to ascertain the reasons and circumstances surrounding the termination of [the Applicant's] services".

On 1 November 1987, the Director General of GAPAR transmitted to the UNRWA Field Officer in the Syrian Arab Republic correspondence exchanged between the Applicant and the Government, "with a view to ascertaining the facts, and circumstances which have led to the termination of [the Applicant's] services." In a reply dated 10 November 1987, the Director of UNRWA Affairs in the Syrian Arab Republic informed the Director General of GAPAR of the facts leading to the Applicant's dismissal. He explained that the Applicant had appealed against the decision, that the JAB had recommended maintaining it and had so advised the Commissioner-General. The latter accepted the recommendation and informed the Applicant accordingly. According to the Respondent, "no further information was thereafter requested by GAPAR".

On 22 January 1991, the Applicant, through her counsel, wrote to the Director General of UNRWA Affairs in the Syrian Arab Republic, stating that UNRWA had not notified her of the decision by the JAB, nor had she been "allowed access to that decision, if there [was] any". On 18 February 1991, the Acting Field Administration Officer transmitted to the Applicant a copy of the JAB report and a copy of the Commissioner-General's letter to the Applicant.

On 9 May 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The decision taken by the Commissioner-General on 18 May 1987, on the recommendations of the JAB, was not communicated to the Applicant until 22 January 1991.

2. The decision to dismiss the Applicant was based on prejudice and was taken in violation of the Staff Regulations and Rules.

Whereas the Respondent's principal contentions are:

1. The Applicant's contention that she had not been notified for almost four years of the outcome of her appeal to the JAB is untenable.

2. The application is not receivable because it was filed after the prescribed time-limit.

3. Subsidiarily, the application is not receivable because of the Applicant's acquiescence.

The Tribunal, having deliberated from 11 to 18 June 1992, now pronounces the following judgement:

I. Although a recital of the principal facts in this case and of the contentions of the parties has been given, the Tribunal has first to examine and decide if the application is receivable under article 7.4 of the Tribunal's Statute. This article states inter alia:

> "4. An application shall not be receivable unless it is filed within ninety days ... reckoned from the date of the communication of the joint body's opinion containing recommendations unfavourable to the applicant".

II. In this instance, the Joint Appeals Board (JAB) adopted its report, recommending dismissal of the Applicant's appeal, on 7 May 1987 and the Applicant claims that the joint body's recommendation and the UNRWA decision thereon were not communicated to her until 22 February 1991 - after a delay of almost four years. If that claim can be sustained, the application would be receivable.

III. Among the papers submitted to the Tribunal is a letter dated 18 May 1987, addressed to the Applicant by the Commissioner-General, which stated that it enclosed a copy of the JAB's report and that her appeal was dismissed. The letter was addressed to "Mrs. Badriyeh Sha'er, c/o Field Office, Damascus, Syria" and marked "Please transmit the original to Mrs. Sha'er". The Respondent asserts, and the file shows, that the letter and the enclosure were transmitted to the Applicant by a letter dated 21 May 1987. Although the record before the Tribunal contains no other direct evidence of transmittal, such as a receipt, there are persuasive reasons, as discussed below, to hold that the Applicant either received the report about May 1987, or was aware of its contents.

IV. First, other documents were similarly transmitted to the Applicant, this apparently being a customary procedure, and their receipt was undisputed. Accordingly, a presumption exists with regard to the timely transmittal of the letter dated 21 May 1987 and its enclosure.

V. In October 1987, the Applicant requested the Syrian Minister for Social Affairs and Labour to intercede on her behalf with the General Administration for Palestinian Arab Refugees (GAPAR), and stated to him that GAPAR had advised UNRWA with respect to her termination. This indicates strongly that the Applicant was aware of the finality of her termination and the JAB's recommendation. Her complaint to the Minister cites no unreasonable delay by the JAB in acting on her appeal.

VI. Moreover, the JAB made reference to a communication dated 20 January 1987, from GAPAR to UNRWA, shortly before she was terminated. Since the sequence of events described in the application makes no mention of any involvement by GAPAR, and there is no other indication that information about GAPAR's involvement was made known to the Applicant prior to the JAB report, it is a fair inference that the Applicant's knowledge in October 1987 of GAPAR's involvement came from her having seen the JAB report.

VII. On 10 November 1987, a communication was sent by UNRWA to GAPAR, reporting on the JAB recommendation, to enable GAPAR to respond to an inquiry made to it about the Applicant's case by the Syrian Minister, which was

doubtless prompted by the Applicant's October 1987 request to him. The information contained in the letter of 10 November 1987, can be assumed to have been forwarded to the Syrian Minister. It would be unreasonable to suppose that the Syrian Minister did not, in turn, inform the Applicant of its contents in response to her October request.

VIII. In the light of the foregoing, the Tribunal concludes that the Applicant had knowledge, in 1987, of the JAB report and of the final decision based thereon. Even if it were otherwise, the Tribunal would decide that the application was irreceivable: the Tribunal notes that for almost four years the Applicant, despite her claim of never having received the JAB report and the final decision thereon, did not make a single enquiry to UNRWA or to any other authority with regard to delay on the part of the JAB, or to ascertain the outcome of her appeal. Nor did she appeal, as she might have, long before 1991, to the UNRWA Special Panel of Adjudicators. In the circumstances, any applicant, particularly a head teacher of long standing, would be expected to make such enquiry and take the appropriate action if she had not known the outcome of her appeal against her dismissal. The Tribunal cannot therefore entertain a disputed claim of non-receipt of a JAB report and related decision as a plausible ground for a much-delayed and time-barred appeal to the Tribunal.

IX. Accordingly, the Tribunal decides that the application is not receivable.

(Signatures)

Jerome ACKERMAN
President

Samar SEN
Member

Ioan VOICU
Member

Geneva, 18 June 1992

R. Maria VICIEN-MILBURN
Executive Secretary